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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000-0029]

[Docket 2012-0076; Sequence 27]

Federal Acquisition Regulation;

**Submission for OMB Review; Extraordinary Contractual Action
Requests**

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning extraordinary contractual action requests. A notice was published in the Federal Register on September 12, 2012 (77 FR 56213). One comment was received.

DATES: Submit comments on or before **[Insert date 30 days after publication in the Federal Register]**.

ADDRESSES: Submit comments identified by **Information Collection 9000-0029, Extraordinary Contractual Action Requests**, by any of the following methods:

- Regulations.gov: <http://www.regulations.gov>.

Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link "Submit a Comment" that corresponds with "Information Collection 9000-0029, Extraordinary Contractual Action Requests". Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "Information Collection 9000-0029, Extraordinary Contractual Action Requests" on your attached document.

- Fax: 202-501-4067.
- Mail: General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street, NE, Washington, DC 20417. ATTN: Hada Flowers/IC 9000-0029, Extraordinary Contractual Action Requests.

Instructions: Please submit comments only and cite Information Collection 9000-0029, Extraordinary Contractual Action Requests, in all correspondence related to this collection. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Cecelia L. Davis, Procurement Analyst, Office of Governmentwide Acquisition Policy, GSA (202) 219-0202 or email at Cecelia.davis@gsa.gov.

SUPPLEMENTARY INFORMATION:

A. Purpose

FAR Subpart 50.1 prescribes policies and procedures that allow contracts to be entered into, amended, or modified in order to facilitate national defense under the extraordinary emergency authority granted under 50 U.S.C. 1431 et seq. and Executive Order (EO) 10789 dated November 14, 1958, et seq. In order for a contractor to be granted relief under the FAR, specific evidence must be submitted which supports the firm's assertion that relief is appropriate and that the matter cannot be disposed of under the terms of the contract.

The information is used by the Government to determine if relief can be granted under FAR and to determine the appropriate type and amount of relief.

B. Analysis of Public Comments

One respondent submitted public comments on the extension of the previously approved information collection. The analysis of the public comments is summarized as follows:

Comment: The respondent commented that the extension of the information collection would violate the fundamental purposes of the Paperwork Reduction Act because of the

burden it puts on the entity submitting the information and the agency collecting the information.

Response: In accordance with the Paperwork Reduction Act (PRA), agencies can request an OMB approval of an existing information collection. The PRA requires that agencies use the Federal Register notice and comment process, to extend the OMB's approval, at least every three years. This extension, to a previously approved information collection, pertains to information collections associated with extraordinary contractual actions as authorized under 50 U.S.C. 1431 et seq. and Executive Order (EO) 10789 dated November 14, 1958, as amended by E.O. 12919 dated June 3, 1994, EO 13232 dated October 20, 2001, and EO 13286 dated February 28, 2003, as implemented in FAR Part 50, that allow contracts to be entered into, amended, or modified in order to facilitate national defense. In order for a firm to be granted relief under the Act, specific evidence must be submitted which supports the firm's assertion that relief is appropriate and that the matter cannot be disposed of under the terms of the contract. The information is used by the Government to determine if relief can be granted under the Act and to determine the appropriate type and amount of relief.

Comment: The respondent commented that the agency did not accurately estimate the public burden challenging that the agency's methodology for calculating it is insufficient and inadequate and does not reflect the total burden each respondent faces to comply. The respondent suggested that the estimated total burden hours be reassessed and revised for greater accuracy. Specifically, the respondent stated that the "estimate of only 100 respondents that will be subject to this requirement is understated" and estimated, without providing substantive supporting data, that "the number of respondents is more likely closer to 500 annually." In addition, the respondent questioned the estimate of 16 hours of burden associated with each response, and suggested that "a more reasonable estimate would be in the range of 80 to 160 hours per response." For these reasons, the same respondent provided that the burden of compliance with the information collection requirement greatly exceeds the agency's estimate and outweighs any potential utility of the extension.

Response: Serious consideration is given, during the open comment period, to all comments received and adjustments are made to the paperwork burden estimate based on reasonable considerations provided by the public. This is evidenced, as the respondent notes, in FAR Case 2007-006 where an adjustment was made from the total preparation

hours from three to 60. This change was made considering particularly the hours that would be required for review within the company, prior to release to the Government.

The burden is prepared taking into consideration the necessary criteria in OMB guidance for estimating the paperwork burden put on the entity submitting the information. For example, consideration is given to an entity reviewing instructions; using technology to collect, process, and disclose information; adjusting existing practices to comply with requirements; searching data sources; completing and reviewing the response; and transmitting or disclosing information. The estimated burden hours for a collection are based on an average between the hours that a simple disclosure by a very small business might require and the much higher numbers that might be required for a very complex disclosure by a major corporation. Also, the estimated burden hours should only include projected hours for those actions which a company would not undertake in the normal course of business.

Careful consideration went into assessing the burden hours for this collection, and it is determined that an upward adjustment is not required.

The respondent expressed concern that the "estimate of only 100 respondents that will be subject to this requirement is understated" and estimated, without providing

substantive supporting data, that "the number of respondents is more likely closer to 500 annually." We disagree. FAR Part 50 prescribes policies and procedures for entering into, amending, or modifying contracts in order to facilitate the national defense under extraordinary emergency authorities. Executive Order 10789 authorizes 15 agencies to exercise the authority conferred by Pub. L. 85-804 (50 U.S.C. 1431-1434). The estimate of 100 respondents would, therefore, average to approximately seven actions issued under extraordinary contracting authority per agency per year. We find this to be a more reasonable estimate and more in keeping with the extraordinary, thus, rare nature for exercise of the authority than the average of 33 actions per agency per year estimated by the commenter when citing that "the number of respondents is more likely closer to 500 annually." The respondent is reminded that the estimate provided is based on an average which considers that not every one of the 15 agencies with extraordinary contracting authority uses that authority in a given year.

In addition, the respondent questioned the estimate of 16 hours of burden associated with each response, and again, without providing substantive supporting data, suggested that "a more reasonable estimate would be in the range of 80 to 160 hours per response." The respondent is reminded that estimated burden hours should only include projected hours

for those actions which a company would not undertake in the normal course of business. We believe that the estimated 16 hours of burden reasonably reflect the time necessary for a contractor to perform the actions associated with its role in extraordinary contractual actions that go beyond the normal course of business, e.g., issue a request and certification, provide supporting information, as appropriate. Therefore, in the absence of substantive data to support doing otherwise, no adjustments are deemed necessary for the estimated number of respondents or estimated burden hours per respondent.

C. Annual Reporting Burden

The annual reporting burden is not changed from what was published in the Federal Register on September 24, 2009 (74 FR 48744). Based on coordination with subject matter experts and consideration of the requirements for estimating the burden within the Paperwork Burden Act, the determination was made to not revise the annual reporting burden. However, at any point, members of the public may submit comments for further consideration, and are encouraged to provide data to support their request for an adjustment.

The annual reporting burden is estimated as follows:

Respondents: 100.

Responses Per Respondent: 1.

Total Responses: 100.

Hours Per Response: 16.

Total Burden Hours: 1,600.

OBTAINING COPIES OF PROPOSALS: Requester may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street, NE, Washington, DC 20417, telephone (202) 501-4755. Please cite OMB Control No. 9000-0029, Extraordinary Contractual Action Requests, in all correspondence.

Dated: March 15, 2013

William Clark,
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